



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO HAWKEYE MANUFACTURING, INC. VAD980714216

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Waste Management Board and Hawkeye Manufacturing, Inc. for the purpose of resolving certain alleged violations of the Virginia Waste Management Act and the Virginia Hazardous Waste Management Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Facility" means the property located at 1125 Commerce Road in Richmond, Virginia, which is the primary place of business for Hawkeye Manufacturing, Inc.

6. "Hawkeye" means Hawkeye Manufacturing, Inc., a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Order" means this document, also known as a Consent Order.
8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. "VHWMR" means the Virginia Hazardous Waste Management Regulations 9 VAC 20-60-12 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. Hawkeye Manufacturing, Inc. ("Hawkeye") is a hot tub manufacturer that was located at 1125 Commerce Road in Richmond, Virginia ("Facility") from 2001 through 2006. Hawkeye is now located at 1500 Commerce Road in Richmond, Virginia.
2. On May 25, May 30, and June 28, 2006, DEQ staff conducted inspections at the Facility and observed sixty-six 55-gallon drums containing variable amounts of spent acetone. The drums were stored outdoors. Some drums had open bungs, which resulted in rainwater mixing with the spent acetone. Other drums contained only spent acetone or spent acetone mixed with remaining resin or other materials. The facility accumulated one to two drums per month since the operation began in 2001, resulting in a total of 66 drums accumulated on the site. The total weight of the drums was greater than 6,000 kilograms.
3. The acetone in the drums had been used as a solvent during the manufacturing process at the Facility. Acetone has a flash point below 140°F. The spent acetone in the drums is therefore listed and characteristic hazardous waste, according to 40 CFR §261.31(a) and 40 CFR §261.21, respectively. The mixtures of spent acetone and rainwater, resin, or other materials are also considered hazardous wastes, according to 40 CFR §261.3(a)(2)(iv).
4. Hawkeye is therefore a "Generator" of hazardous wastes, as that term is defined by 40 CFR §260.10. All generators are required by 40 CFR §262.11 to make waste determinations, however Hawkeye did not make any determinations until instructed to do so by DEQ during the first inspection. All generators are also required by 40 CFR §262.34(d)(4) to clearly mark hazardous waste storage containers with the date that accumulation begins and the words "Hazardous Waste"; however Hawkeye did not meet this requirement.
5. Hawkeye's reported generation rate indicates that the facility is normally a Small Quantity Generator. Small Quantity Generators are allowed by 40 CFR §262.34(d)(1) to accumulate up to 1,000 kg per month of hazardous waste, but never more than 6,000 kg of hazardous waste at one time. At the time of the inspection, the total weight of the drums at the Facility that contained waste acetone and waste acetone mixtures exceeded 6,000 kilograms. Hawkeye therefore exceeded the weight allowed

for Small Quantity Generators and is therefore subject to the requirements for Large Quantity Generators found in 40 CFR Parts 261 and 262, Subparts A, B, C, and D. Representatives from Hawkeye contend that they were unaware of the thresholds for Small / Large Quantity Generators. As a result, Hawkeye did not notify the Department of the change in its generator status or the intent to accumulate hazardous waste, as required by 9 VAC 20-60-315.D and 9 VAC 20-50-262.B.4, respectively. As stated in Paragraph 4, Hawkeye did not perform any waste determinations, and therefore did not keep records of such determinations for at least 3 years after the waste was sent to on-site storage, as required by 40 CFR 262.40(c).

6. Because the drums accumulated on the property for greater than the 90 days allotted by 40 CFR § 262.34(a), the Facility is also subject to the requirements for Hazardous Waste Storage Facilities found in 40 CFR §§ 264, 265, and 270. Hawkeye did not obtain the permit required by 40 CFR §270.1(c) and 9 VAC 20-60-270 for the storage of hazardous waste, or adhere to the storage facility standards found in 40 CFR §§264 and 265. Hawkeye also did not submit a biennial report to the Department by March 1 of each evenly numbered year, as required by 40 CFR §264.75 and 9 VAC 20-60-264.
7. On August 30, 2006, Notice of Violation (NOV) No. 06-08-PRO-601 was issued for the violations described in Paragraphs 4, 5, and 6 above.
8. After the issuance of the NOV, Hawkeye representatives worked with DEQ staff to correct the violations. A meeting between DEQ staff and Hawkeye representatives was held on September 18, 2006 to discuss the violations and corrective action. Hawkeye indicated that the drums containing the waste acetone were removed from the site by a permitted hazardous waste transporter and taken to a permitted treatment, storage, and disposal ("TSD") facility in South Carolina. Analysis by the TSD facility indicated that approximately 24 of the drums contained more than 50% water and were treated in the TSD's hazardous water program. Five drums were non-processable, due to debris or other drum contents inappropriate for fuels blending. The remaining 37 drums contained liquids, sludges, and solids with sufficient acetone content for blending as fuels and incineration. Test results indicate that the energy content in these drums was up to 10,734 BTU/lb. Pure acetone has an energy content of 13,280 BTU/lb.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455(F), orders Hawkeye, and Hawkeye voluntarily agrees, to pay a total civil charge of \$30,000, consisting of eight quarterly payments, the first payment of \$3750 shall be due within 30 days of the effective day of the order, the following seven quarterly payments of \$3750 shall be due on the 1st of every third month, in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia" and shall be delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104

Richmond, Virginia 23218

Either on a transmittal letter or as a notation on the check, Hawkeye shall include its Federal Identification Number.

SECTION E: Administrative Provisions

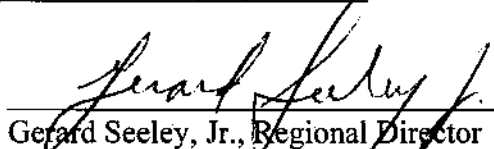
1. The Board may modify, rewrite, or amend the Order with the consent of Hawkeye for good cause shown by Hawkeye, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation (NOV No. 06-08-PRO-601) issued by DEQ on August 30, 2006. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Hawkeye admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Hawkeye consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Hawkeye declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Hawkeye to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Hawkeye shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Hawkeye shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Hawkeye shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
- a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Hawkeye. Notwithstanding the foregoing, Hawkeye agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Hawkeye. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Hawkeye from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Hawkeye voluntarily agrees to the issuance of this Order.

And it is so ORDERED this November 6 2007.


Gerard Seeley, Jr., Regional Director
Department of Environmental Quality

Hawkeye voluntarily agrees to the issuance of this Order.

Date: 10-1-07

By: David E. Shoaf
David E. Shoaf, President
Hawkeye Manufacturing, Inc.

Commonwealth of Virginia
City/County of Richmond



The foregoing document was signed and acknowledged before me this 1st day of

October, 2007, by David E. Shoaf, who is
(Name)

President of Hawkeye, on behalf of the Corporation.
(Title)

Nikki N. Carrington
Notary Public

My commission expires: May 31, 2011